

Message Text

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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 3177
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS
AMEMBASSY THE HAGUE
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY OTTAWA
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AMEMBASSY TOKYO

C O N F I D E N T I A L SECTION 01 OF 04 GENEVA 10571

FOR THE DEPUTY SECRETARY FROM AMBASSADOR RICHARDSON

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: MEETING OF "LIKE-MINDED" STATES ON LAW OF THE
SEA, GENEVA, NOVEMBER 12

REF: STATE 238213 AND 240450

SUMMARY: LOS REPRESENTATIVES OF SEVEN "LIKE-MINDED"
STATES MET ON NOVEMBER 12 TO DISCUSS LOS POLICY OBJEC-
TIVES AND TACTICS ON SEABEDS, LEGISLATION AND CONTINGENCY
PLANNING. ALL WERE FIRM ON NEED FOR MAXIMUM EFFORT TO
GET FINAL SEABEDS TEXT BETTER THAN EVENSEN'S THIRD
REVISION. ALL AGREED THAT COORDINATED WORK SHOULD
BEGIN ON FORMULATING PRINCIPLES AND NEW TEXTS, DEFERRING
DECISION ON HOW AND WHEN TO HAVE TEXTS INTRODUCED INTO
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NEGOTIATING PROCESS. FRANCE DESCRIBED ITS PROPOSAL FOR
TEN-YEAR PROVISIONAL SEABEDS REGIME WITHIN LOS TREATY AS
POSSIBLE APPROACH. DISCUSSION OF SEABED MINING
LEGISLATION REFLECTED HESITANCY OVER DESIRABILITY OF
ACTING NOW BUT RECOGNITION THAT US LEGISLATION MIGHT
GENERATE SIMILAR MOVEMENT IN OTHER COUNTRIES. FRANCE
SPOKE OF A LIMITED MULTI-LATERAL TREATY AS A NECESSARY

COMPLEMENT TO UNILATERAL LEGISLATION, WHILE FRG RAISED POSSIBILITY OF A LIMITED TREATY NOT IN CONNECTION WITH LEGISLATION BUT AS A CONTINGENCY AGAINST THE FAILURE OF THE LOS CONFERENCE. ALL AGREED WITH US STATEMENT THAT WE MUST TAKE CARE THAT THE LIMITED TREATY IDEA IS NOT PERCEIVED BY OTHERS AS A THREAT OR AN INDICATION THAT IT IS JUDGED PREFERABLE TO A COMPREHENSIVE LOS TREATY CONTAINING ACCEPTABLE SEABEDS PROVISIONS. THERE WAS NO OBJECTION TO US STATEMENT THAT IT WOULD NOT CONSULT DEVELOPING COUNTRIES ON THE QUESTION OF A LIMITED TREATY BEFORE ASSESSING THE REACTIONS OF THE "LIKE-MINDED" GROUP. IT WAS AGREED THAT, IF ASKED, PARTICIPANTS WOULD DESCRIBE MEETING AS ARISING FROM LEGITIMATE INTEREST OF PARTICIPANTS IN EXAMINING TOGETHER THE ICNT AND ALTERNATIVES TO IT, INCLUDING LEGISLATION. FINALLY, IT WAS AGREED THAT EXPERTS SHOULD MEET IN EARLY JANUARY TO FOLLOW UP ON "LIKE-MINDED" DISCUSSIONS. COMMENT: I BELIEVE THE MEETING WENT EXTREMELY WELL AND FOSTERED A COMMON PERCEPTION OF THE NEED TO THINK IN REALISTIC TERMS ABOUT THE EVENTUALITY OF CONFERENCE FAILURE WHILE CONTINUING TO MAKE EVERY EFFORT TO NEGOTIATE AN ACCEPTABLE LOS TREATY. I RECOMMEND WE DEFER CONTACTS WITH ADDITIONAL COUNTRIES ON THE LIMITED TREATY IDEA UNTIL WE HAVE HAD AN OPPORTUNITY TO DISCUSS IT FURTHER WITH "LIKE-MINDED" COUNTRIES. END SUMMARY

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1. ON NOVEMBER 12, LOS REPRESENTATIVES OF SEVEN "LIKE-MINDED" SEABED MINING COUNTRIES MET AT US MISSION GENEVA AT US INVITATION (REFTELS). ATTENDING WERE FRANCE, BELGIUM, THE NETHERLANDS, THE FRG, THE UK AND JAPAN. THE USSR, WHICH HAD BEEN OFFERED THE OPPORTUNITY TO ATTEND, INFORMED US IN ADVANCE THAT IT WOULD NOT BE REPRESENTED. CANADIAN AMBASSADOR BEESLEY, WHO SHOWED UP ONLY FOR THE POST-MEETING LUNCH, CLAIMED THAT HE HAD NOT UNDERSTOOD CANADA WAS INVITED TO THE MEETING. (COMMENT: IT APPEARS THAT BEESLEY SIMPLY DECIDED TO BOYCOTT THE MEETING, PRESUMABLY TO AVOID ASSOCIATION OF HIS AND CANADA'S NAME WITH THE "LIKE-MINDED" CONCEPT, MAINTAIN HIS CREDENTIALS WITH THE G-77, AND PRESERVE CANADIAN INDEPENDENCE ON SEABED MINING ISSUES.)

2. RICHARDSON (US) EXPRESSED THE VIEW THAT THE ICNT SEABEDS PROVISIONS CONSTITUTE SUCH A STRONG DISINCENTIVE TO INVESTMENT THAT, IF THEY WERE INCLUDED IN A TREATY, NO MINING WOULD TAKE PLACE PURSUANT TO THEM. AT THE SAME TIME, THE G-77, WHICH HAD BEEN QUIESCENT IN THE FACE OF THE EVENSEN TEXT, HAD BEEN HANDED A WINDFALL IN THE ENGO TEXT THAT IT WILL FIND HARD TO RELINQUISH.

THUS, OTHERS SHOULD BE MADE AWARE THAT THERE IS A LIMIT TO THE PRICE WE WOULD PAY FOR A TREATY AND THAT WE HAVE ALTERNATIVES FOR PROTECTING THE VARIOUS INTERESTS WE HAVE AT STAKE IN THE LOS CONFERENCE. WITH RESPECT TO THE WORK AHEAD, RICHARDSON ASKED WHETHER WE CAN PROCEED TO NEGOTIATE FROM THE ICNT AND STILL EXPECT TO END UP WITH A TREATY CONTAINING AN ACCEPTABLE SEABED REGIME.

3. ARCULUS (UK), KNOKE (FRG), DE LACHARRIERE (FRANCE) AND RICHARDSON ALL STATED THEIR STRONG BELIEF THAT THE GOAL

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MUST BE TO ACHIEVE A RESULT ON SEABEDS BETTER THAN, OR TO THE RIGHT OF, EVENSEN'S THIRD REVISION. OTHERS DID NOT DISSENT, BUT RIPHAGEN (NETHERLANDS) ADVISED THAT THE FINAL PRODUCT SHOULD RESEMBLE THE ICNT IN FORM FOR COSMETIC REASONS. TURNING TO THE PROBLEM OF HOW TO BEGIN TO WORK TOWARD THIS GOAL, FRANCE SUGGESTED PREPARATION OF THREE DOCUMENTS: (A) AN OUTLINE OF OUR CONCEPTION OF A FAIR SEABED REGIME, EASILY UNDERSTOOD BY THE PRESS AND PUBLIC; (B) A STATEMENT OF PRINCIPLES; AND (C) DRAFT TEXTS TO REPLACE OR ALTER THE OBJECTIONABLE PARTS OF THE ICNT. THE FRG ANNOUNCED ITS INTENTION TO TABLE A REVISED ICNT SEABEDS TEXT, ALREADY PREPARED IN BONN, AT EUROPEAN COMMUNITY LOS CONSULTATIONS, BUT FRANCE

AND UK EXPRESSED MARKED SKEPTICISM THAT AGREED EC TEXT WOULD EMERGE IN TIME TO BE USEFUL. THE GENERAL FEELING WAS THAT IDENTICAL TEXTS OR A SINGLE AGREED TEXT WOULD BE LESS USEFUL FROM A NEGOTIATING VIEWPOINT THAN SIMILAR

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TEXTS PREPARED IN CONCERT. LEFT OPEN WAS A DECISION ON WHEN AND HOW HARMONIZED TEXTS MIGHT BEST BE SURFACED.

4. IN DISCUSSION OF POSSIBLE NEW APPROACHES TO THE SEABED REGIME PROBLEMS, JEANNEL (FRANCE) OUTLINED A PROPOSAL FOR A SIMPLIFIED "PROVISIONAL REGIME" OF TEN YEARS' DURATION, EMBODYING A CLEAR PARALLEL SYSTEM, TO REPLACE THE ICNT SEABEDS TEXTS. THE "JEANNEL PROPOSAL" GENERATED INTEREST, BUT THERE WAS NO ATTEMPT TO EXPLORE IT THOROUGHLY OR TO AGREE ON HOW AND WHEN IT MIGHT BE PUT FORWARD. JEANNEL AGREED TO MAKE IT AVAILABLE IN WRITING TO THE OTHER PARTICIPANTS FOR THEIR FURTHER CONSIDERATION. (US HAD ALREADY BEEN FURNISHED A COPY, WHICH IS AVAILABLE IN THE DEPARTMENT.)

5. NOTING THAT US SEABED MINING LEGISLATION WILL MOST LIKELY BE PASSED AFTER THE 7TH CONFERENCE SESSION, ALTHOUGH THE HOUSE MAY WELL HAVE PASSED A BILL BEFORE THEN RICHARDSON ASKED OTHERS TO REPORT ON LEGISLATIVE STATUS IN THEIR COUNTRIES.

(A) YOKOTA (JAPAN) SAID THAT SOME PARLIAMENTARIANS ARE INTERESTED IN LEGISLATION, BUT THAT IT HASN'T YET TAKEN ANY CONCRETE SHAPE. THE GOJ HAS NOT EXPRESSED ITSELF ON THE DESIRABILITY OF LEGISLATION.

(B) ARCULUS (UK) REPORTED THAT HMG IS UNDER PRESSURE FROM FIRMS INTERESTED IN SEABED MINING, IS CONSIDERING THE MATTER, BUT HAS SO FAR NOT TAKEN ANY ACTION.

(C) KNOKE (FRG) RECALLED THAT THE BUNDESTAG HAS PASSED A RESOLUTION STATING THAT, IF THERE IS NOT SUFFICIENT PROGRESS AT THE LOS CONFERENCE, THE POSSIBILITY OF LEGISLATION MUST BE CONSIDERED. THERE IS NOW A GOVERNMENT

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PROPOSAL FOR A DRAFT BILL WORKING ITS WAY TOWARD CABINET CONSIDERATION.

(D) NOLAERD (BELGIUM) STATED THAT GOB IS EXAMINING THE QUESTION OF LEGISLATION CLOSELY AND FAVORS LEGISLATION

IN PRINCIPLE, BUT ONLY IF IT IS TRANSITORY IN NATURE.
THE GOB WOULD PREFER AN INTERNATIONAL REGIME FOR SEABED
MINING BUT, GIVEN THE STATE OF LOS NEGOTIATIONS, BELIEVES
LEGISLATION WILL ENCOURAGE MOVEMENT AT THE CONFERENCE,
NOT HINDER IT.

(E) RIPHAGEN (NETHERLANDS) SAID THAT THE GON IS HESITANT
ABOUT LEGISLATION BECAUSE OF THE POTENTIAL CONSEQUENCES
FOR THE CONFERENCE.

(F) RICHARDSON NOTED THAT THE USG AND MOST MINING FIRMS
SEE LOS TREATY AS A MUCH PREFERABLE ALTERNATIVE TO
UNILATERAL ACTION. ACCORDINGLY, AN ATTEMPT HAS BEEN MADE
TO KEEP THE VARIOUS BILLS CONSISTENT WITH THE CONFERENCE,
FOR INSTANCE BY MAKING THEM INTERIM AND INCLUDING
PROVISION FOR AN ESCROW FUND FOR EVENTUAL REVENUE SHARING.

(G) DE LACHARRIERE (FRANCE) SAID THERE IS NO GOVERNMENT
POSITION YET BUT THAT MOVEMENT IN THE US CONGRESS MAY
COMPEL GOF TO ACT: LEGISLATION MEANS LICENSES TO EXPLORE
AND EXPLOIT THE SEABED, AND, GIVEN THE RELATIVELY
SMALL NUMBER OF MINING SITES AND THE QUALITATIVE
DIFFERENCES AMONG THEM, THERE IS A DEFINITE ADVANTAGE TO
GETTING THERE FIRST. GOF DOES NOT WANT COMPETITION IN
SEABED MINING TO TAKE THE FORM OF A RACE FOR LEGISLATION
AND LICENSES.
6. FOLLOWING ON THIS LINE OF ARGUMENTATION, DE LACHARRIERE

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INFO AMEMBASSY BONN
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EXPRESSED THE OPINION THAT, TO AVOID SUCH A RACE, THERE MUST BE PROVISION FOR A MULTI-LATERAL AGREEMENT AMONG LIKE-MINDED STATES TO COMPLEMENT SEPARATE NATIONAL LEGISLATIVE ACTS. IN THE ABSENCE OF NATIONAL LEGISLATION, FRANCE WOULD NOT ADVOCATE A LIMITED AGREEMENT UNLESS IT BECOMES CLEAR THAT THERE WILL BE NO COMPREHENSIVE LOS TREATY. IN THAT CASE, DE LACHARRIERE SAID, A MULTI-LATERAL TREATY OPEN TO ALL STATES WOULD BE DESIRABLE.

7. RICHARDSON NOTED THAT A LIMITED SEABED MINING TREATY, WERE IT PROPERLY CONSTRUCTED, COULD GIVE GREATER AFFIRMATION OF THE COMMON HERITAGE THAN WOULD UNILATERAL LEGISLATION. FROM A TACTICAL POINT OF VIEW, A LIMITED TREATY MIGHT CONVINCE OTHERS THAT WE HAVE AN ALTERNATIVE TO A COMPREHENSIVE TREATY MORE ATTRACTIVE AND LESS CONFRONTATIONAL THAN RECIPROCAL LEGISLATION. RICHARDSON RECOGNIZED THAT A LIMITED TREATY PROPOSAL CARRIES RISKS, CONFIDENTIAL

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INCLUDING THE PERCEPTION THAT WE ARE NO LONGER INTERESTED IN A COMPREHENSIVE TREATY OR THAT WE WISH TO SCUTTLE THE CONFERENCE. ALDRICH (US) ADDED THAT THE PROPOSAL MUST BE HANDLED CAREFULLY SO AS TO BE INTERPRETED NOT AS A THREAT BUT AS AN ELEMENT IN THE CONTINGENCY PLANNING THAT ANY PRUDENT GOVERNMENT WOULD UNDERTAKE IN SIMILAR CIRCUMSTANCES. IN THIS CONNECTION, WE SHOULD BE LOOKING AT ALTERNATIVE WAYS OF PROTECTING LOS INTERESTS OTHER THAN SEABEDS AS WELL. FINALLY, WE MUST NOT GIVE THE IMPRESSION THAT WE PREFER ANYTHING TO A COMPREHENSIVE LOS TREATY WITH ACCEPTABLE SEABEDS PROVISIONS.

8. ARCULUS (UK) AGREED WITH THE NEED TO REDUCE THE CONFRONTATIONAL POTENTIAL OF THE PROPOSAL, ADDING THAT ITS ENTIRE ASPECT WOULD CHANGE IF TWO OR THREE DEVELOPING COUNTRIES SUBSCRIBED TO A LIMITED TREATY. RICHARDSON RESPONDED THAT WE DID NOT NOW WANT TO APPROACH ANYONE OUTSIDE THE "LIKE-MINDED" GROUP AND WOULD NOT DO SO BEFORE MAKING A SUBSEQUENT ASSESSMENT OF REACTION OF THE GROUP.

9. IGUCHI (JAPAN) SAID THAT THIS MATTER HAD BEEN DISCUSSED WITHIN HIS GOVERNMENT. THE CONCLUSION REACHED WAS THAT, WHILE LEGISLATION WOULD BE INTERIM IN NATURE AND COULD THEREFORE BE INTRODUCED AT ANY TIME, A MULTI-LATERAL AGREEMENT SHOULD BE HELD IN RESERVE FOR THE CONTINGENCY OF COLLAPSE OF THE LOS CONFERENCE.

10. RIPHAGEN (NETHERLANDS) EXPRESSED AGREEMENT WITH POINTS MADE BY ALDRICH, SAYING WE MUST BE AWARE OF THE POSSIBLE CONSEQUENCES ON THE CONFERENCE.

11. FLEISCHHAUER (FRG) OBSERVED THAT THERE ARE TWO MODELS FOR A LIMITED SEABED MINING TREATY: (A) THE CONFIDENTIAL

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FRENCH MODEL, I.E., A TREATY ACCOMPANYING THE ENACTMENT OF NATIONAL LEGISLATION; AND (B) A TREATY TO BE NEGOTIATED BASED ON A DETERMINATION THAT THE LOS CONFERENCE WILL FAIL. BOTH MODELS SHOULD BE KEPT IN MIND.

12. RICHARDSON PROPOSED THE FOLLOWING PUBLIC AFFAIRS GUIDANCE ON THE MEETING ON AN "IF ASKED" BASIS: THE PARTICIPANTS (A) WOULD NOT ATTEMPT TO CONCEAL THE FACT OF THE MEETING, (B) WOULD NOTE THEY ARE ALL REPRESENTED BY ENTITIES MOVING TOWARD SEABED MINING, AND (C) WOULD NOTE THEY HAVE A LEGITIMATE INTEREST IN EXAMINING TOGETHER THE ICNT AS WELL AS ALTERNATIVES TO IT, INCLUDING LEGISLATION. THERE WAS NO DISSENT, AND ARCULUS (UK) ADVISED AGAINST BEING TOO EXPLICIT WITH RESPECT TO THE LIMITED TREATY PROPOSAL.

13. FINALLY, IT WAS AGREED THAT "LIKE-MINDED" EXPERTS MIGHT MEET IN EARLY JANUARY FOR FOLLOW-UP DISCUSSIONS, SPECIFICALLY ON THE QUESTIONS OF TEXTUAL CHANGES TO THE ICNT, THE "JEANNEL PROPOSAL", AND THE LIMITED SEABED MINING TREATY PROPOSAL.

14. COMMENT: IN MY VIEW, THE MEETING COULD NOT HAVE GONE BETTER. WHILE THE BELGIANS AND DUTCH WERE RELATIVELY QUIET, THE OVERALL DISCUSSION WAS FRANK AND REVEALING, PARTICULARLY WITH REGARD TO THE FRENCH VIEWS ON LEGISLATION AND A LIMITED TREATY. IN GENERAL, I BELIEVE THE MEETING WENT FAR TOWARD FOSTERING A COMMON PERCEPTION OF THE NEED TO THINK IN REALISTIC TERMS ABOUT WHAT STEPS MAY BE NECESSARY SHOULD THE LOS CONFERENCE FAIL TO PRODUCE A TREATY WITH AN ACCEPTABLE SEABEDS TEXT. AT THE SAME TIME, I THINK OTHER PARTICIPANTS NOW KNOW THAT

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INFO AMEMBASSY BONN

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THE US PREFERENCE IS FOR A COMPREHENSIVE TREATY, BUT NOT
AT ANY PRICE. IN ACCORD WITH THE SENSE OF THE MEETING,
I RECOMMEND THAT WE DEFER CONTACTING OTHER COUNTRIES,
ESPECIALLY DEVELOPING COUNTRIES, ON THE LIMITED TREATY
PROPOSAL UNTIL WE HAVE GIVEN IT FURTHER THOUGHT AND HAD
THE OPPORTUNITY TO CONSULT FURTHER WITH THE "LIKE-MINDED"
GROUP. SORENSON

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